



Department of Justice

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ANTITRUST DIVISION ANNOUNCES MERGER REVIEW PROCESS IMPROVEMENTS

WASHINGTON, D.C. — The Department of Justice’s Antitrust Division today announced improvements to its merger review procedures that will make the process for obtaining additional information in a merger investigation more efficient for the business community and the Division. The Federal Trade Commission, which shares responsibility for enforcement of the antitrust laws over mergers, has agreed to undertake similar measures. The improvements, consisting of seven initiatives, will affect the Hart-Scott-Rodino Act “second request” process.

“These improvements, which clarify current procedures as well as implement new practices, strike the correct balance between the agencies’ need for information about the industry and the transaction and the parties’ desire to quickly complete their transactions,” said Joel I. Klein, Assistant Attorney General of the Department’s Antitrust Division. “We greatly appreciate the leadership and cooperation of the Senate and House Judiciary Committees, particularly Chairmen Hatch and Hyde, as well as Senators Leahy, DeWine and Kohl and Congressmen Conyers, Rogan, and Delahunt, in assisting with the development of these proposals.”

A “second request” is a request, authorized by Section 7A(e) of the Clayton Act, for additional information or documentary materials from either or both of the parties to a proposed

merger and is an integral part of the Hart-Scott-Rodino Act premerger review process. In

general, the Hart-Scott-Rodino Act requires that certain proposed acquisitions of stock or assets must be reported to the Antitrust Division and the Federal Trade Commission. The parties must then wait a specified period, 30 days for most transactions, before they may complete the transaction. If either agency determines during the waiting period that further inquiry is necessary, it then issues a “second request” for information and continues to investigate the proposed merger. The issuance of a “second request” extends the review period for a specified period after the parties have complied with the request.

Many of the improvements are continuations or extensions of existing practices at the Antitrust Division. They are being restated or expanded to assist the business community’s understanding of the Division’s second request process.

The proposed improvements to the second request process are:

- C Centralized high level review of “second requests” prior to issuance;
- C Early conferences with the merging parties to identify competitive issues;
- C Quick turn-around of requests for modifications of a “second request”;
- C New procedures for appealing “second request” issues;
- C “Best practices” for “second request” procedures;
- C Specialized staff training on “second request” investigations; and
- C Ongoing consultation with the industry and the private bar to identify further means of easing merger review.

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